

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**FREEDOM FROM RELIGION  
FOUNDATION, INC. and JOHN ROE,**

*Plaintiffs,*

v.

**JUDGE WAYNE MACK in his personal  
capacity and in his official judicial capacity  
on behalf of the State of Texas,**

*Defendants.*

CASE NO. 4:19-cv-1934

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**PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT**

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The undersigned counsel, on behalf of plaintiffs, the Freedom From Religion Foundation and John Roe, move this Court for entry of default and default judgment as to Defendant Judge Wayne Mack in his official judicial capacity, upon the Complaint heretofore filed and served upon the Defendant, in accordance with Federal Rules of Civil Procedure 55(a) and 55(b), and in support thereof shows the Court the following:

1. On May 29, 2019, Plaintiffs Freedom From Religion Foundation (FFRF) and John Roe filed in United States District Court, Southern District of Texas, Houston Division, a Complaint alleging that Judge Wayne Mack in his official judicial capacity opens his court proceedings with Christian prayer in violation of the Establishment Clause of the First Amendment of the United States Constitution. *See* Dkt. No. 1.
2. On August 19, 2019, a copy of the Complaint and Summons was served on Judge Wayne Mack in his official capacity by Giltene McDaniel. *See* Dkt. No. 11.
3. Federal Rule of Civil Procedure 12(b)(1)(A)(i) states that “a defendant must serve an answer within 21 days after being served with the summons and complaint.” As of the

date of the filing of this motion, more than a year has elapsed since the service of the Complaint on Judge Wayne Mack in his official judicial capacity. During this time, Judge Wayne Mack in his official judicial capacity has failed to serve a response upon Plaintiffs and failed to make an appearance before this Court.

4. Pursuant to the provisions of Federal Rule of Civil Procedure 55(b)(2), this Court is empowered to enter a default and default judgment against the Judge Wayne Mack in his official judicial capacity for relief sought by Plaintiffs in their Complaint.
5. Defendant Judge Wayne Mack in his official judicial capacity has failed to plead or otherwise defend this action, and Plaintiffs are entitled to judgment by default against Defendant in that capacity.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter a default and default judgment against Judge Wayne Mack in his official judicial capacity and issue declaratory relief that Judge Mack's courtroom prayer practice violates the Establishment Clause of the First Amendment of the United States Constitution.

Respectfully submitted,

/s/ Samuel T. Grover

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December 18, 2020

#### **CERTIFICATE OF SERVICE**

I certify that, on December 18, 2020, a true and correct copy of this motion was served by ECF on all counsel of record. This was also served on Judge Wayne Mack in his official judicial capacity via certified mail, return receipt requested at 19380 Hwy 105 West, Suite 507, Montgomery, TX 77356. Judge Mack in his official judicial capacity was also served via certified mail at his residence in Conroe, TX.<sup>1</sup>

/s/ Samuel T. Grover  
Samuel T. Grover

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<sup>1</sup> Judge Mack's address is not being published here due to his position as a judge.